

SECOND REGULAR SESSION

# HOUSE BILL NO. 1898

## 91ST GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVES CAMPBELL AND REINHART (Co-sponsors).

Read 1<sup>st</sup> time February 12, 2002, and 1000 copies ordered printed.

TED WEDEL, Chief Clerk

4589L.011

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### AN ACT

To amend chapter 338, RSMo, by adding thereto eleven new sections relating to a tax on licensed retail pharmacies in this state, with an emergency clause.

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*Be it enacted by the General Assembly of the state of Missouri, as follows:*

Section A. Chapter 338, RSMo, is amended by adding thereto eleven new sections, to  
2 be known as sections 338.500, 338.505, 338.510, 338.515, 338.520, 338.525, 338.530, 338.535,  
3 338.540, 338.545 and 338.550, to read as follows:

**338.500. 1. In addition to all other fees and taxes required or paid, a tax is hereby**  
2 **imposed upon licensed retail pharmacies for the privilege of providing outpatient**  
3 **prescription drugs in this state. The tax is imposed upon the Missouri gross retail**  
4 **prescription receipts earned from filling outpatient retail prescriptions.**

5 **2. For purposes of sections 338.500 to 338.550:**

6 **(1) "Gross retail prescription receipts" shall include the receipts from cost sharing,**  
7 **dispensing fees, and retail prescription drug sales;**

8 **(2) "Licensed pharmacy" shall have the same meaning as such term is defined in**  
9 **section 338.210;**

10 **(3) "Retail" means a sale for use or consumption and not for resale.**

**338.505. 1. Each licensed retail pharmacy's tax shall be based on a formula set**  
2 **forth in rules promulgated by the department of social services. No rule or portion of a**  
3 **rule promulgated under the authority of this section shall become effective unless it has**  
4 **been promulgated pursuant to chapter 536, RSMo.**

5 **2. The director of the department of social services or the director's designee, may**  
6 **prescribe the form and contents of any forms or other documents required by sections**  
7 **338.500 to 338.550.**

8           3. Notwithstanding any other provision of law to the contrary, appeals regarding  
9 the promulgation of rules pursuant to this section shall be made to the circuit court of Cole  
10 County. The circuit court shall hear the matter as the court of original jurisdiction.

          338.510. 1. Each licensed retail pharmacy shall keep such records as may be  
2 necessary to determine gross retail prescription receipts.

3           2. The director of revenue may prescribe the form and contents of any forms or  
4 other documents required by this section.

5           3. Each licensed retail pharmacy shall report the preceding month's gross retail  
6 prescription receipts to the department of revenue by the fifteenth of each month.

7           4. The department of revenue shall provide the department of social services with  
8 the information that is necessary to implement the provisions of sections 338.500 to  
9 338.550.

10          5. The information obtained by the department of social services from the  
11 department of revenue shall be confidential and any employee of the department of social  
12 services who unlawfully discloses any such information for any other purpose, except as  
13 authorized by law, shall be subject to the penalties specified in section 32.057, RSMo.

          338.515. The tax imposed by sections 338.500 to 338.550 shall become effective upon  
2 promulgation of rules by the department of social services, but no later than July 1, 2002,  
3 or the effective date of sections 338.500 to 338.550, whichever is later.

          338.520. 1. The determination of the amount of tax due shall be the monthly gross  
2 retail prescription receipts reported to the department of revenue multiplied by the tax rate  
3 established by rule by the department of social services. Such tax rate shall not exceed six  
4 percent of gross retail prescription receipts.

5           2. The department of social services shall notify each licensed retail pharmacy of  
6 the amount of tax due and the amount of tax paid on a quarterly basis.

          338.525. If a pharmacy's gross retail prescription receipts are included in the  
2 revenue assessed by the federal reimbursement allowance or the nursing facility  
3 reimbursement allowance, the proportion of those taxes paid or the entire tax due shall be  
4 allowed as a credit for the pharmacy tax due pursuant to section 338.500.

          338.530. The director of the department of social services may offset the tax owed  
2 by a pharmacy against any Missouri Medicaid payment due such pharmacy, if the  
3 pharmacy requests such an offset. The amounts to be offset shall result, so far as  
4 practicable, in withholding from the pharmacy an amount substantially equal to the  
5 assessment due from the pharmacy. The office of administration and the state treasurer  
6 may make any fund transfers necessary to execute the offset.

          338.535. 1. The pharmacy tax owed or, if an offset has been made, the balance after

2 such offset, if any, shall be remitted by the pharmacy to the department of social services.  
3 The remittance shall be made payable to the director of the department of revenue and  
4 shall be deposited in the state treasury to the credit of the "Pharmacy Tax Fund" which  
5 is hereby created to provide payments for services related to the Medicaid pharmacy  
6 program. All investment earnings of the fund shall be credited to the fund.

7 2. An offset authorized by section 338.530 or a payment to the pharmacy tax fund  
8 shall be accepted as payment of the obligation set forth in section 338.500.

9 3. The state treasurer shall maintain records showing the amount of money in the  
10 pharmacy tax fund at any time and the amount of investment earnings on such amount.

11 4. Notwithstanding the provisions of section 33.080, RSMo, to the contrary, any  
12 unexpended balance in the pharmacy tax fund at the end of the biennium shall not revert  
13 to the credit of the general revenue fund.

338.540. 1. The department of social services shall notify each pharmacy with a tax  
2 due of more than ninety days of the amount of such balance. If any pharmacy fails to pay  
3 its pharmacy tax within thirty days of such notice, the pharmacy tax shall be delinquent.

4 2. If any tax imposed pursuant to sections 338.500 to 338.550 is unpaid and  
5 delinquent, the department of social services may proceed to enforce the state's lien against  
6 the property of the pharmacy and compel the payment of such assessment in the circuit  
7 court having jurisdiction in the county where the pharmacy is located. In addition, the  
8 department of social services may cancel or refuse to issue, extend, or reinstate a Medicaid  
9 provider agreement to any pharmacy that fails to pay the tax imposed by section 338.500.

10 3. Failure to pay the tax imposed by section 339.500 shall be grounds for denial,  
11 suspension, or revocation of a license granted pursuant to this chapter. The department  
12 of social services may request the board of pharmacy to deny, suspend, or revoke the  
13 license of any pharmacy that fails to pay such tax.

338.545. 1. The Medicaid pharmacy dispensing fee shall be adjusted to include a  
2 supplemental payment amount equal to the tax assessment due plus ten percent.

3 2. The amount of the supplemental payment shall be adjusted once annually  
4 beginning July first or once annually after the initial start date of the pharmacy tax,  
5 whichever is later.

6 3. If the pharmacy tax required by sections 338.500 to 338.550 is declared invalid,  
7 the pharmacy dispensing fee for the Medicaid program shall be the same as the amount  
8 required on July 1, 2001.

338.550. Sections 338.500 to 338.550 shall expire on June 30, 2005.

2 Section B. Because immediate action is necessary to ensure provision of prescription  
3 drugs to low-income residents of this state, section A of this act is deemed necessary for the

4 immediate preservation of the public health, welfare, peace, and safety, and is hereby declared  
5 to be an emergency act within the meaning of the constitution, and section A of this act shall be  
6 in full force and effect upon its passage and approval, whichever later occurs.